

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,) MB Docket No. 03-21
FM Broadcast Stations.) RM-10632
(Port St. Joe and Eastpoint, Florida)¹) RM-10696

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 28, 2003**Released: May 30, 2003**

By the Assistant Chief, Audio Division:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* ("Notice")² issued at the request of Moira L. Ritch ("Petitioner"), proposing the allotment of Channel 270C3 at Port St. Joe, Florida, as the community's second local aural transmission service (RM-10632). Petitioner filed comments reiterating an intention to apply for Channel 270C3, if allotted to Port St. Joe.³ A counterproposal was filed by Richard L. Plessinger, Sr. ("Plessinger"), proposing the allotment of Channel 270A to Eastpoint, Florida, as that community's first local aural transmission service (RM-10696). Petitioner filed Rely Comments in response to the *Public Notice* released in this proceeding.⁴ There were no other counterproposals or additional comments received in response to the above-listed docket.

2. In support of its proposal, Plessinger states that Eastpoint is a licensable community listed in the census, with a 2000 U.S. Census population of 2,158 persons. Eastpoint has its own fire department, post office, public library, elementary school, sewer and water service, and businesses.

3. Although listed in the 2000 U.S. Census as a Census Designated Place ("CDP") with a population of 2,158 persons, Petitioner contends in its Rely Comments that Eastpoint is not a community for allotment purposes. Petitioner concedes the designation of an area as a CDP raises the presumption that an area is a community for allotment purposes. However that presumption is rebuttable.⁵ Petitioner claims that Plessinger has failed to establish a clear nexus between the social, economic, and governmental organizations in Eastpoint.⁶ Petitioner asserts that Plessinger has borrowed institutions intended to serve surrounding communities in an attempt to create community status for Eastpoint, thereby, failing to show any nexus between these organizations and businesses in relationship to the needs

¹ The community of Eastpoint, Florida was added to the captioned.

² *Port St. Joe, Florida*, 18 FCC Rcd 791 (MB 2003).

³ In compliance with § 1.52 of the Commission's rules, Petitioner was requested to include with its comments verification that the statements contained in the petition are accurate to the best of its knowledge. Petitioner has complied with this request.

⁴ See *Public Notice*, Report No. 2206 released on April 23, 2003.

⁵ See *Stock Island, Florida*, 8 FCC Rcd 343 (M.M. Bur. 1993); *East Hemet, California, et al.*, 4 FCC Rcd 7895 (M.M. Bur. 1989); and *Hannahs Mill and Milledgeville, Georgia*, 7 FCC Rcd 3944 (M.M. Bur. 1992).

⁶ See *Avon, North Carolina*, 14 FCC Rcd 3939 (M.M. Bur. 1999); and *Belview, Minnesota*, 11 FCC Rcd 12793 (M.M. Bur. 1996).

of Eastpoint residents rather than the nearby larger community of Apalachicola, Florida.⁷ Petitioner notes that the Commission has previously rejected claims of community status where a nexus between the political, social and commercial organization has not been shown for the community in question.⁸ While Petitioner recognizes that Eastpoint has a post office, which offer minimal local delivery and its own zip code this is not sufficient enough to establish community status for allotment purposes.⁹ In sum, Petitioner emphasizes that Eastpoint is not a community for allotment purposes. There is no formal government, municipal services, civic organization, and minimal economic activity. Therefore, Petitioner believes these facts clearly overcome the presumption that Eastpoint is a community for allotment purposes.¹⁰

4. We disagree with Petitioner's allegations since there is not enough evidence in the record to overcome the presumption that Eastpoint is a community for allotment purposes. Eastpoint does have enough indicia to be a community for allotment purposes. Eastpoint has its own post office, zip code, volunteer fire department, two motels, sewer and water district, elementary school, grocery stores, and other businesses. There are five churches located in Eastpoint. Franklin County has several county departments that are only located in Eastpoint such as a public library, Sheriff's Office, Parks and Recreation office, Animal Control office, Solid Waste Department, and Road Department.¹¹ In the past, the Commission has allotted FM channels to communities that were unincorporated, listed in the census as a CDP, and had less indicia than Eastpoint.¹² Furthermore, the Commission does not require a municipality to be self-governing or to provide every public service on its own in order to merit community status for allotment purposes.¹³ Based on the facts, we find Eastpoint to be a community for allotment purposes.

4. A staff engineering analysis has determined that alternate Channel 283A can be allotted to Eastpoint in compliance with the Commission's minimum distance separation requirements at city reference coordinates.¹⁴ Additionally, Channel 270C3 can be allotted to Port St. Joe, in conformity with the

⁷ See *Lupton, Michigan*, 11 FCC Rcd 14428 (M.M. Bur. 1996); *Pleasant Dale, Nebraska*, 14 FCC Rcd 18893 (M.M. Bur. 1999); *Kanarrville, Utah*, 14 FCC Rcd 15962 (M.M. Bur. 1999); and *Littlefield, Arizona*, 15 FCC Rcd 10263 (M.M. Bur. 2000). (all noting that it is a critical deficiency when a petitioner fails to demonstrate that the organizations and businesses in a proposed community are intended to serve the residents of that community instead of residents in other nearby areas especially since the proposed community is not incorporated or listed in the census, if listed has a small population).

⁸ See *Pike Road and Ramer, Alabama*, 10 FCC Rcd 10347 (M.M. Bur. 1995) (proposed community was denied community status because it was not incorporated and listed in the U.S. Census as a County Census Division of Montgomery County plus petitioner failed to provide sufficient evidence that demonstrated it had other community indicia such as a local newspaper, social, economic or cultural organizations, municipal services, or governmental units that identify themselves specifically with Pike Road).

⁹ See *Crestview and Westbay, Florida*, 7 FCC Rcd 3059 (M.M. Bur. 1992).

¹⁰ See *Grants and Peralta, New Mexico*, 14 FCC Rcd 21446 (M.M. Bur. 1999).

¹¹ Franklin County, FL is governed by the Franklin County Board of County Commissioners that is a legislative branch of government, which serves as the county governing board for the residents of the unincorporated areas in Franklin County.

¹² See *Shawsville, Virginia*, 12 FCC Rcd 11624 (M.M. Bur. 1997); *Smith, Nevada*, 11 FCC Rcd 5298 (M.M. Bur. 1996); *Campbellsville and Mannsville, Kentucky*, 8 FCC Rcd 2880 (M.M. Bur. 1993); and *Indiantown and Okeechobee, Florida*, 8 FCC Rcd 2218 (M.M. Bur. 1993).

¹³ See *Redwood, Mississippi*, 13 FCC Rcd 13886 (M.M. Bur. 1998) and *St. Marks and Woodville, Florida*, 12 FCC Rcd 11957 (M.M. Bur. 1997).

¹⁴ The reference coordinates for Channel 283A at Eastpoint, Florida are 29-44-11 North Latitude and 84-52-42 West Longitude.

Commission's minimum distance separation requirements, provided there is a site restriction of 2.2 kilometers (1.4 miles) south to avoid short-spacing to the application site of Station WWAV, Channel 271C2, Santa Rose, Florida and the license site of Station WBGE, Channel 270A, Brainbridge, Georgia.¹⁵

9. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's rules, IT IS ORDERED, That effective **July 14, 2003**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Eastpoint, Florida	283A
Port St. Joe, Florida	228C2, 270C3

10. The window period for filing applications for Channel 283A at Eastpoint, Florida and Channel 270C3 at Port St. Joe, Florida will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

11. IT IS FURTHER ORDERED, That the aforementioned proceedings ARE TERMINATED.

12. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

¹⁵ The reference coordinates for Channel 270C3 at Port St. Joe, Florida are 29-47-45 North Latitude and 85-17-27 West Longitude.